U.S. Department of Justice

Environment and Natural Resources Division

WBF:EMM:KJF
90-11-3-07240/4

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October 4, 2012

By Federal Express

Ms. Jane Diamond
Director,
Superfund Program Branch
U.S. Environmental Protection Agency 75
Hawthorne Street
San Francisco, California 94105

*Re:* Request for Concurrence in Covenant-not-to-Sue under CERCLA 106 – Pacific Gas & Electric Topock Gas Compressor Site

Dear Ms. Diamond:

On behalf of the U.S. Department of Interior, Bureau of Land Management, Fish and Wildlife Service, and Bureau of Reclamation (collectively the "Federal Agencies")[1], the Department of Justice requests EPA's concurrence in a covenant not to sue under Section 106 of CERCLA, 42 U.S.C. § 9606, in connection with a settlement reached with the Pacific Gas & Electric Company ("PG&E") for the Topock Gas Compressor Site ("Site") located approximately 12 miles southeast of the city of Needles, south of Interstate 40, in the north end of the Chemehuevi Mountains, in San Bernadino County, California. The Compressor Station occupies approximately 15 acres of a 65-acre parcel of PG&E-owned land. The PG&E property is surrounded by the Havasu National Wildlife Refuge and directly south of land under the jurisdiction of the Bureau of Land Management ("BLM") and the Bureau of Reclamation ("BOR").

Pursuant to Executive Order 13016, 61 Fed. Reg. 4587145872 (Aug. 30, 1996), certain authorities under Section 106 of CERCLA, 42 U.S.C. 9606, have been delegated to federal resource management agencies, including the Department of Interior. A Memorandum of Understanding ("MOU") dated February 10, 1998, entered into between EPA and those federal resource management agencies, is intended to implement Executive Order 13016.

Under Section VII.F of the MOU, if a federal resource management agency requests the Department of Justice to enter into a judicial consent decree on its behalf, that agency agrees to seek EPA concurrence in the relief sought. As discussed between our offices, PG&E is the only

[1] Although the contamination originates from the Topock Gas Compressor facility owned by PG&E, contamination has come to be located on lands under the jurisdiction and control of the above-referenced Federal Agencies.

PRP at the Site so it is our hope and expectation that EPA's consideration of this request will be expedited.

1. Site Description

PG&E began operations at the Topock Compressor Station ("Compressor Station") in December 1951 to compress natural gas supplied from the southwestern United States for transport through pipelines to PG&E's service territory in central and northern California. Historic records indicate that PG&E held rights to operate a gas pipeline and compressor station dating back to the Federal Act of 2/25/1920 (41 Stat. 449, as amended). Based on available title records, PG&E gained full ownership of the land in 1965.

From 1951 to 1985, hexavalent chromium ("Cr (VI)")-based corrosion inhibitors and biocides were added to the cooling water used at the Compressor Station. Several different corrosion inhibitors were used during this period; however, all are believed to have contained Cr (VI). Product specification sheets available for one of the additives indicate that it contained 30 percent sodium chromate. In the early 1960s, a separate biocide containing Cr (VI) was also apparently added to assist in the control of algae, fungi, and/or bacteria. Cr (VI) is a "hazardous substance" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

Until approximately 1970, cooling tower blowdown was discharged directly into percolation beds located in Bat Cave Wash, an unlined arroyo immediately west of the Compressor Station, and either percolated into the ground or evaporated at the surface. Wastewater discharged to percolation beds consisted primarily of cooling tower blowdown (about 95%) and a minor volume of effluent from an oil/water separator and other facility maintenance operations(about 5%). Beginning in 1964, PG&E treated the cooling tower blowdown to remove chromium prior to discharge. Around 1970, PG&E began discharging treated cooling tower blowdown to four single-lined evaporation ponds located approximately ½ mile southwest of the Compressor Station. PG&E replaced the Cr (VI)-based cooling water treatment products with phosphate-based products in 1985.

In 2003, DOI notified PG&E that it was a potentially responsible party ("PRP") pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, as an owner and operator of a facility from which hazardous substances had been released into the environment. As the CERCLA lead agency for land under its jurisdiction, custody, or control, DOI initiated negotiations with PG&E on an administrative order by which PG&E would implement a remedial investigation and feasibility study ("RI/FS") and other response actions pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. In July of 2005, DOI and PG&E entered into an Administrative Consent Agreement under which PG&E agreed to implement an RI/FS and certain removal actions, as directed and approved by DOI, to protect public health or welfare or the environment from hazardous substances on or under land under DOI's jurisdiction.

PG&E, under the supervision of the California Department of Toxic Substances Control ("DTSC"), is also implementing a groundwater corrective action at the Compressor Station in conformance with the requirements of the Resource Conservation and Recovery Act ("RCRA"). PG&E and DTSC entered into a Corrective Action Consent Agreement ("CACA"). As noted above, DOI is the lead federal agency overseeing response actions on or emanating from land

under its jurisdiction, custody, or control near the Compressor Station pursuant to CERCLA. In July 2005, PG&E and the federal agencies entered into an Administrative Consent Agreement. Pursuant to the terms of DOI's 2005 Administrative Consent Agreement, the parties agreed to coordinate, to the extent practicable, CERCLA response actions with actions required by DTSC pursuant to the requirements of the CACA. In particular, the parties agreed to coordinate the CERCLA RI/FS with the RFI and CMS required under the CACA, and to coordinate any CERCLA removal actions selected by DOI with any Interim Measures required by DTSC.

2. Proposed Settlement

Under the proposed Consent Decree, PG&E has agreed to implement DOI's selected groundwater remedy at the Site as set forth in DOI's Record of Decision, issued January 20, 2011. A copy of the proposed Consent Decree has been previously provided to your office. DOI estimates that the value of the work to be performed under the proposed Consent Decree is approximately $184,000,000. In addition, the United States is not compromising any of its past or future costs in connection with the proposed Consent Decree.

As part of the settlement, PG&E has insisted upon a covenant not to sue from the Federal Agencies under CERCLA Section 106. Given that the proposed settlement represents the best chance for remediation of the Site, which remains under DOI jurisdiction, it would be appropriate for EPA to concur in this covenant.

a. CERCLA 106 Covenant

Under the 1998 MOU, certain principles govern a federal resource management agency's exercise of CERCLA 106 authority, as well as EPA's concurrence in such exercise. The following factors are most relevant to EPA's concurrence in the proposed CERCLA 106 covenant: (1) the protectiveness of the selected response actions; (2) notice to the affected state and consideration of state concerns; (3) potential liability of the federal resource management agency; and (4) potential exposure of the Superfund to a claim for reimbursement. See MOU Sections V.B.1 and VII.E.

As noted above, the selected response actions, to be performed entirely by PG&E through the proposed settlement, are designed to meet appropriate clean-up standards addressed in the January 20, 2011 ROD, and as set forth in the proposed Consent Decree the CERCLA work will be closely coordinated with the State's ongoing corrective action at the Site. Accordingly, the proposed response actions are expected to be environmentally protective and have taken into consideration concerns raised by the State.

In addition, there is no dispute that the contamination sought to be addressed under the proposed Consent Decree originated from PG&E's facility and that the Federal Agencies themselves are not liable as a PRP.

Finally, under the proposed Consent Decree, PG&E waives any right of reimbursement under Section 106(b) of CERCLA against the Superfund, as well as waiving other constitutional,

statutory, and common law rights. Accordingly, the proposed settlement does not expose the Superfund, or the government generally, to claims by PG&E.

3. Responses to Particular Information Requested by EPA Region 9

In discussing this matter with Joshua Wirtshafter and Lewis Maldonado of the Office of Regional Counsel, we understand there is additional information they requested of DOI. DOI's responses to these requests are attached as Appendix A hereto entitled EPA Questions and DOI Responses. In addition, enclosed please find a Compact Disk which contains DOI documents related to this request.

If you need any further information, please do not hesitate to contact Karl Fingerhood of this office at (202) 514-7519 or karl.fingerhood@usdoj.gov. We look forward to your expedited consideration of this matter.

Sincerely,

ELLEN M. MAHAN
Acting Chief,
Environmental Enforcement Section

Attachments

cc: (w/o attachments)
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